TITLE II--FUNCTIONAL REGULATION

Subtitle A--Bank Brokers, Dealers, and Issuers

SEC. 201. DEFINITION OF BROKER AS APPLIED TO BANKS.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4) BROKER.--

"(A) IN GENERAL.--The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) EXCLUSION OF BANKS.--The term 'broker' does not include a bank unless such bank--

"(i) publicly solicits the business of effecting securities transactions for the account of others; or

"(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions (hereafter referred to as 'incentive compensation').

"(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.--Notwithstanding subparagraph (B), a bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.--The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services (on or off the bank's premises) if--

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, unless made impossible by space or personnel considerations, physically separate from the bank's routine deposit-taking activities;

"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the broker or dealer, and not the bank, is providing the brokerage services;

"(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under

the contractual or other arrangement comply with the Federal securities laws before distribution;

"(V) in connection with brokerage transactions, bank employees perform only clerical or ministerial functions, including scheduling appointments with the associated persons of a broker or dealer and, on behalf of a broker or dealer, transmitting orders or handling customers' funds or securities (except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customer orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization);

"(VI) bank employees do not directly receive transaction-based compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization (except that bank employees may receive nominal cash and noncash compensation for customer

referrals if the cash compensation is a one-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction);

"(VII) all customers that receive brokerage services are fully disclosed to the broker or dealer; and

"(VIII) the broker or dealer informs each customer that the broker or dealer, and not the bank, is providing the brokerage services and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

"(ii) TRUST ACTIVITIES.--The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962, or for State banks under relevant State trust statutes or law, unless the bank--

"(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; or

"(II) receives incentive compensation for such brokerage activities.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.--The bank effects transactions in exempted securities, commercial paper, bankers acceptances, commercial bills, qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority that are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that section 5136 of the Revised Statutes of the United States expressly authorizes a national bank to underwrite or deal in.

"(iv) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.--The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

"(v) SWEEP ACCOUNTS.--The bank effects transactions as part of a program for the investment or reinvestment of bank deposit

funds in any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

"(vi) AFFILIATE TRANSACTIONS.--The bank effects transactions for the account of any affiliate of the bank, as defined in section 2 of the Bank Holding Company Act of 1956.

"(vii) PRIVATE SECURITIES OFFERINGS.--The bank--

"(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b) or paragraph (2) or (6) of section 4 of the Securities Act of 1933 and the rules and regulations issued thereunder; and

"(II) effects such sales exclusively to an accredited investor, as defined in section 2 of the Securities Act of 1933.

"(viii) SAFEKEEPING AND CUSTODY SERVICES.--The bank, as part of customary banking activities--

"(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

"(II) clears or settles transactions in securities;

"(III) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to subclause (I) or (II) or invests cash collateral pledged in connection with such transactions; or

"(IV) holds securities pledged by one customer to another customer or securities subject to resale agreements between customers or facilitates the pledging or transfer of such securities by book entry.

"(ix) CONTRACTS OF INSURANCE.--The bank effects transactions in contracts of insurance.

"(x) BANKING PRODUCTS.--The bank effects transactions in banking products, as defined in section 18 of the Federal Deposit Insurance Act.

"(xi) DE MINIMIS EXEMPTION.--The bank effects in any calendar year, other than in transactions referred to in clauses (i) through (x), not more than--

"(I) 800 transactions in securities for which a ready market exists, and

"(II) 200 other transactions in securities.

"(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).--The term 'broker' does not include a bank that--

"(i) was subject to section 15(e) immediately prior to the enactment of the Financial Services Competition Act of 1997; and

"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.".

SEC. 202. DEFINITION OF DEALER AS APPLIED TO BANKS.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5) DEALER.--

"(A) IN GENERAL.--The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.--The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but does not do so as part of a regular business.

"(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.--A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

"(i) The bank buys and sells exempted securities, commercial paper, bankers acceptances, commercial bills, qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that section 5136 of the Revised Statutes of the United States expressly authorizes a national bank to underwrite or deal in.

"(ii) The bank buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary.

"(iii) The bank underwrites contracts of insurance.

"(iv) The bank buys and sells banking products, as defined in section 18 of the Federal Deposit Insurance Act.

"(v) The bank offers or sells solely to an accredited investor (as defined in section 2 of the Securities Act of 1933) securities backed by or representing an interest in notes, drafts, acceptances,

loans, leases, receivables, or other obligations, or in pools of any such obligations originated or purchased by the bank or any affiliate of the bank.".

SEC. 203. APPLICATION OF THIS TITLE TO BANKS REGISTERED AS BROKERS OR DEALERS.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(i) APPLICATION OF THIS TITLE TO BANKS REGISTERED AS BROKERS OR DEALERS.--

"(1) NONDISCRIMINATION.--In administering and enforcing this title with respect to banks that are registered brokers or dealers, the Commission shall not treat banks more restrictively than any other entities that are registered as brokers or dealers pursuant to this section.

"(2) CAPITAL REQUIREMENTS.--

"(A)WELL-CAPITALIZED BANKS.--Capital requirements for brokers or dealers shall not apply to a bank that is well-capitalized, as defined in section 38 of the Federal Deposit Insurance Act and determined by the appropriate Federal banking agency as defined in section 3 of that Act, provided that the bank's brokerage and dealer activities requiring registration do not represent the predominant portion of the bank's gross revenues.

"(B) OTHER BANKS.--The Commission, in consultation with the appropriate federal regulatory agencies for banks, shall provide appropriate transitional relief to banks that are registered brokers or dealers, and that cease to be well-capitalized but are adequately capitalized, as defined in section 38 of the Federal Deposit Insurance Act. Such rules shall take account of the purposes of this section and the extent to which bank capital requirements further those purposes.".

SEC. 204. EXCLUSION FROM SIPC MEMBERSHIP OF BANKS REGISTERED AS BROKERS OR DEALERS.

Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is amended--

(a) in clause (i), by striking "and" after the semicolon;

(b) in clause (ii), by striking the period at the end and inserting "; and"; and

(c) by adding at the end the following new clause:

"(iii) banks."

SEC. 205. REPEAL OF CERTAIN EXEMPTIONS FOR BANK-ISSUED SECURITIES.

(a) SECURITIES ACT OF 1933.--

(1) Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any security issued or guaranteed by any bank;" and

inserting “or, to the extent otherwise deemed to be a security, any banking product as defined in section 18 of the Federal Deposit Insurance Act, or any contract of insurance issued by a bank;”.

(2) Section 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)) is amended to read as follows:

“(5) Any security issued by--

“(A) a farmers’ cooperative organization exempt from taxation under section 521 of the Internal Revenue Code of 1986;

“(B) a corporation described in section 501(c)(16) of the Internal Revenue Code of 1986, and exempt from taxation under section 501(a) of that Code; or

“(C) a corporation described in section 501(c)(2) of the Internal Revenue Code of 1986, that is exempt from taxation under section 501(a) of that Code and is organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to an organization or corporation referred to in subparagraph (A) or (B) of this paragraph.”.

(3) Section 4 of the Securities Act of 1933 is amended by adding at the end the following new subsection:

"(8) Any offer or sale of securities by a newly formed entity that is organized for the purpose of being operated as a bank or savings association subject to the oversight of a federal banking regulatory agency.".

(b) SECURITIES EXCHANGE ACT OF 1934.-- Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is repealed.

SEC. 206. INFORMATION-SHARING AND CONSULTATION.

(a) INFORMATION-SHARING WITH BANK REGULATORY AGENCIES UNDER THE SECURITIES EXCHANGE ACT OF 1934.-- Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended by adding at the end the following new subsection:

"(f) INFORMATION-SHARING WITH BANK REGULATORY AGENCIES.--

"(1) FILINGS AND REPORTS.--The Commission shall provide the appropriate regulatory agency for any bank subject to this title with a copy of any application, notice, statement, or report filed with the Commission by such bank pursuant to any provision of this title.

"(2) NOTICE AND CONSULTATION.--Prior to adopting disclosure regulations that may materially affect banks, the Commission shall provide notice to, consult with, and consider the views of, each appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act.".

(b) INFORMATION-SHARING WITH BANK REGULATORY AGENCIES UNDER THE SECURITIES ACT OF 1933.-- Section 25 of the Securities Act of 1933 (15 U.S.C. 77y) is

amended by striking "Nothing" and inserting "(a) Nothing" and by adding at the end the following new subsection:

"(b) INFORMATION-SHARING WITH BANK REGULATORY AGENCIES.--

"(1) FILINGS AND REPORTS.--The Commission shall provide the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act) with a copy of any registration statement or prospectus filed pursuant to any provision of this title by a bank under the jurisdiction of such agency.

"(2) NOTICE AND CONSULTATION ON REGULATIONS.--Prior to adopting disclosure regulations that may materially affect banks, the Commission shall provide notice to, consult with, and consider the views of, each appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act.".

(c) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(x) CONSULTATION WITH COMMISSION.--The appropriate federal banking agency shall notify, and to the extent practicable consult with, the Securities and Exchange Commission, prior to causing any insured financial institution, or any affiliated entity, to liquidate a securities position that may have a significant market impact.".

SEC. 207. BANKING PRODUCTS DEFINED.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(s) BANKING PRODUCTS DEFINITION.--

"(1) DEFINITION.--The term "banking product" as used in section 3(a)(2) of the Securities Act of 1933 and paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 means--

"(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(B) a banker's acceptance;

"(C) a letter of credit issued by a bank;

"(D) a debit account at a bank arising from a credit card or similar arrangement;

"(E) a loan or loan participation issued in the ordinary course of bank business, including any debt security issued in connection with sovereign debt restructuring which a bank purchases and sells pursuant to such bank's lending authority;

"(F) a qualified financial contract (as defined in section 11(e)(8)(D)(i)), except that such term does not include--

"(i) any securities contract (as defined in section 11(e)(8)(D)(ii)) that is based on or directly relates to a security that section 5136 of the Revised Statutes of the United States does not

expressly authorize a national bank to underwrite or deal in, unless the appropriate Federal banking agency determines that such securities contract is appropriate for a bank to underwrite or deal in, taking into account other qualified financial contracts which a bank is permitted to underwrite or deal in; and

"(ii) any agreement, contract, or transaction that the Federal Deposit Insurance Corporation determines (in a regulation prescribed after the date of the enactment of the Financial Services Competition Act of 1997) to be a qualified financial contract, unless the appropriate Federal banking agency determines that such agreement, contract, or transaction shall be treated as a qualified financial contract for purposes of this subsection; and

"(G) any other product that is available in the course of a banking business if the appropriate federal banking agency and the Securities and Exchange Commission jointly determine by order or regulation--

"(i) that the product is more appropriately regulated as a banking product; and

"(ii) that regulation of the product as a banking product is consistent with the maintenance of fair and orderly markets and the protection of investors.

"(2) SECURITIZATION.--Paragraph (1) does not authorize any agency to exempt from the requirements of section 3(a)(2) of the Securities Act of 1933 or paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations.

"(3) JOINT AGENCY DETERMINATION PROCESS.--The Securities and Exchange Commission and the appropriate federal banking agency shall complete their consideration of whether an activity is a banking product under paragraph (1)(G) within 15 business days after either agency makes a written request to the other agency for a joint determination. If, at the end of the 15 business day period, the Securities and Exchange Commission and the appropriate federal banking agency have not issued a joint determination, the Commission and the agency shall file with the National Council on Financial Services their records relating to their consideration of the activity under paragraph (1)(G) and written arguments in support of their positions.

"(4) EXEMPTION LIMITED.--Exemption of a particular product as a banking product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose other than defining the term banking product in section 3(a)(2) of the Securities Act of 1933 and paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.".

SEC. 208. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

Section 11(m) of the Federal Reserve Act (12 U.S.C. 248(m)) is repealed.

SEC. 209. EFFECTIVE DATE.

This subtitle shall become effective 270 days after the date of enactment of this Act.

Subtitle B--Bank Investment Company and Investment Adviser Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.--Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended--

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "(f) Every registered" and inserting

"(f) CUSTODY OF SECURITIES.-- "(1) Every registered";

(3) by designating the 2d, 3d, 4th, and 5th sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

(4) by adding at the end the following new paragraph:

"(6) Notwithstanding any provision of this subsection, if a bank described in paragraph (1) or an affiliated person of such bank is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.".

(b) UNIT INVESTMENT TRUSTS.--Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(1)) is amended by inserting before the semicolon at the end the following:

", except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor, the Commission may adopt rules and regulations or issue orders, consistent with the protection of investors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)".

(c) FIDUCIARY DUTY OF CUSTODIAN.--Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended--

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) as custodian.".

SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

Section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a-18) is amended by adding at the end the following new subsection:

"(l) Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.".

SEC. 213. INDEPENDENCE OF INVESTMENT COMPANY DIRECTORS.

(a) IN GENERAL.--Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended--

(1) by redesignating clause (vi) as clause (vii); and

(2) by striking clause (v) and inserting the following new clauses:

"(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for--

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account over which the investment company's investment adviser has brokerage placement discretion, or any affiliated person of such a person,

"(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to--

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account for which the investment company's investment adviser has borrowing authority, or any affiliated person of such a person, or".

(b) CONFORMING AMENDMENT.--Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(B)) is amended--

(1) by redesignating clause (vi) as clause (vii);

(2) by striking clause (v); and

(3) by inserting after clause (iv) the following new clauses:

"(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for--

"(I) any investment company for which the investment adviser or principal underwriter serves as such,

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

"(III) any account over which the investment adviser has brokerage placement discretion, or any affiliated person of such a person,

"(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to--

"(I) any investment company for which the investment adviser or principal underwriter serves as such,

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related

to any investment company for which the investment adviser or principal underwriter serves as such, or

"(III) any account for which the investment adviser has borrowing authority, or any affiliated person of such a person, or".

(c) AFFILIATION OF DIRECTORS.--Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)) is amended by striking "bank, except" and inserting "bank (and its subsidiaries), except".

(d) EFFECTIVE DATE.--Subsection (a) of this section shall become effective 1 year after the date of enactment of this Act.

SEC. 214. ADDITIONAL SEC AUTHORITY OVER DISCLOSURES CONCERNING FDIC INSURANCE OR GOVERNMENT OR BANK GUARANTEE.

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-34(a)) is amended to read as follows:

"(a) MISREPRESENTATION OF GUARANTEES.--

"(1) IN GENERAL.--It shall be unlawful for any person issuing or selling any security of which a registered investment company is the issuer to represent or imply in any manner whatsoever that such security or company--

"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

"(B) has been insured by the Federal Deposit Insurance Corporation; or

"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

"(2) DISCLOSURES.--Any person issuing or selling the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company--

"(A) is not insured by the Federal Deposit Insurance Corporation;

"(B) is not guaranteed by an affiliated insured depository institution; and

"(C) is not otherwise an obligation of any bank or insured depository institution;

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

"(3) DEFINITIONS.--The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.".

SEC. 215. BANK DEFINITION IN INVESTMENT COMPANY ACT TO CONFORM TO DEFINITION OF DEPOSITORY INSTITUTION IN FEDERAL DEPOSIT INSURANCE ACT.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 101(b) of the International Banking Act of 1978)".

SEC. 216. REPEAL OF BANK EXCLUSION FROM DEFINITION OF BROKER IN THE INVESTMENT COMPANY ACT.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

"(6) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934, except that such term does not include any person solely because such person is an underwriter for one or more investment companies.".

SEC. 217. REPEAL OF BANK EXCLUSION FROM DEFINITION OF DEALER IN THE INVESTMENT COMPANY ACT.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as follows:

"(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 218. EXTENSION OF INVESTMENT ADVISERS ACT TO BANK ADVISING A REGISTERED INVESTMENT COMPANY.

(a) INVESTMENT ADVISER.--Section 202(a)(11)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)(A)) is amended by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.--Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraph:

"(25) The term 'separately identifiable department or division' of a bank means a unit--

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the

day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.".

SEC. 219. REPEAL OF BANK EXCLUSION FROM DEFINITION OF BROKER IN THE INVESTMENT ADVISERS ACT.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.".

SEC. 220. REPEAL OF BANK EXCLUSION FROM DEFINITION OF DEALER IN THE INVESTMENT ADVISERS ACT.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 221. INFORMATION SHARING ON INVESTMENT ADVISER ACTIVITY.

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting after section 210 the following new section:

"SEC. 210A. CONSULTATION

"(a) EXAMINATION RESULTS AND OTHER INFORMATION.--

"(1) The appropriate Federal banking agency shall, upon request, provide the Commission the results of any examination, reports, records, or other information as each may have access to regarding the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, that is registered under section 203 of this title, or, in the case of a bank holding company or bank, that has a subsidiary or a separately identifiable department or division registered under that section, to the extent necessary for the Commission to carry out its statutory responsibilities.

"(2) The Commission shall, upon request, provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information regarding the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section

203 of this title, to the extent necessary for the agency to carry out its statutory responsibilities.

"(b) OTHER AUTHORITY NOT AFFECTED.--Nothing in this section limits the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

"(c) DEFINITION.--For purposes of this section, the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 222. VOTING REQUIREMENTS WHEN INVESTMENT ADVISER HOLDS CONTROLLING INTEREST IN FUND AS FIDUCIARY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended by adding at the end the following new subsection:

"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.--

"(1) IN GENERAL.--If any investment adviser to a registered investment company, or any affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall--

"(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person

acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974--

"(i) transfer the power to vote the shares of the investment company through to--

"(I) the beneficial owners of the shares;

"(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

"(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

"(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

"(2) EXEMPTION.--Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

"(3) SAFE HARBOR.--No investment adviser to a registered investment company nor any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

"(4) CHURCH PLAN EXEMPTION.--Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.".

SEC. 223. SECURITIES LAWS APPLY TO CERTAIN BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.--Section 3(a)(2) of the Securities Act of 1993 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".

(b) SECURITIES EXCHANGE ACT OF 1934.--Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

"(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;".

(c) INVESTMENT COMPANY ACT OF 1940.--Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by inserting before the period the following:

", if--

"(A) the bank employs such fund solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

"(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not--

"(i) advertised; or

"(ii) offered for sale to the general public; and

"(C) fees and expenses charged by such fund do not contravene fiduciary principles established under applicable Federal or State law".

SEC. 224. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, this subtitle shall take effect 90 days after the date of enactment of this Act.